

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
VICTOR PENA-PONCE,)
Defendant.)
NO. 4:07-cr-00151

**REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY
(PLEA AGREEMENT)**

The United States of America and the defendant, having both filed a written consent to conduct of the plea proceedings by a magistrate judge, appeared before me pursuant to Fed. R. Crim. P. 11 and LCrR 11.1. The defendant entered a plea of guilty to Count 1 of the Indictment charging with possession with intent to distribute at least 5 kilograms of cocaine, a Schedule II controlled substance, in violation of Title 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and Title 18 U.S.C. § 2. After advising and questioning the defendant under oath concerning each of the subjects addressed in Rule 11(b)(1), I determined that the guilty plea was in its entirety voluntarily, knowingly and intelligently made and did not result from force, threats, or promises (other than promises in the plea agreement). I further determined that there is a factual basis for the guilty plea on each of the essential elements of the offense(s) in question. A plea agreement

was disclosed at the plea proceeding and defendant stated he understood its terms and agreed to be bound by them. To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C) defendant was advised the sentencing judge may elect to defer acceptance of the plea agreement until after the sentencing judge has reviewed the presentence report as permitted by Rule 11(c)(3)(A). To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B) defendant was advised by the Court that defendant has no right to withdraw the plea if the Court does not follow a recommendation or request in question.

I recommend that the plea(s) of guilty be accepted and that the defendant be adjudged guilty and have sentence imposed accordingly. A presentence report has been ordered and a status conference scheduled.

Albert J. Brem
UNITED STATES MAGISTRATE JUDGE

4/30/08
DATE

NOTICE

Failure to file written objections to this Report and Recommendation within ten (10) days from the date of its service shall bar an aggrieved party from attacking such Report and Recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B). The Report and Recommendation was served this date by delivery of a copy thereof to counsel for the government and defendant in open court.